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 United States of America

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Criminal Case No. 07CR3160-DMS
)	
Plaintiff,)	
)	
v.)	GOVERNMENT RESPONSE
)	TO MOTION FOR MISCELLANEOUS
MIGUEL ROSAS-LEON,)	RELIEF
)	Hearing Date: May 16, 2008
)	Hearing Time: 11:00 a.m.
Defendant.)	
_____)	

I

INTRODUCTION

The United States of America, by and through its counsel, Assistant United States Attorney Christina M. McCall, on behalf of the Metropolitan Correctional Center, San Diego, California (MCC San Diego), and the United States Marshals Service (USMS), hereby submits its response and opposition to defendant's motion to be transferred back to MCC San Diego.

Miguel Rosas-Leon, Register Number 17098-198, is a pretrial inmate currently confined at a private downtown facility owned and operated by the GEO Group under contract with the USMS.

1 Previously, he was confined at MCC San Diego. He was transferred
2 from MCC San Diego to GEO after the institution learned the inmate
3 was engaging in inappropriate conduct, including abusing his law
4 library privileges. See Baird Decl. (Exhibit 1), ¶ 4.
5 Arrangements had been made at MCC San Diego for Rosas-Leon to have
6 greater access to the inmate law library, however, he abused that
7 privilege by attempting to pass contraband in the library as
8 explained in the attached declaration by Associate Warden (AW)
9 Maureen P. Baird. Id. As a result, on April 25, 2008, Rosas-Leon
10 was transferred from MCC San Diego to GEO. Id.

11 As Ms. Baird's declaration explains, Rosas-Leon was caught
12 abusing his law library privileges and was becoming overly
13 familiar with staff and the institution. Id. Of particular
14 concern was the inmate's increasingly cavalier attitude and
15 staff's failure to discipline Rosas-Leon's obvious misconduct.
16 Id. at ¶ 5-6. As a result, MCC San Diego does not want Rosas-
17 Leon to return to that facility. Id. at ¶ 9.

18 II

19 ARGUMENT

20 **A. Inmates Have No Right to Be Housed In a Particular Prison**

21 Ordinarily, the Bureau of Prisons (BOP) may transfer an
22 inmate from one prison to another, at any time and for any reason,
23 and the inmate is not entitled to notice or a hearing concerning
24 the movement. 18 U.S.C. § 4082(b); Grayson v. Rison, 945 F.2d
25 1064, 1067 (9th Cir. 1991); Ward v. United States Parole Comm'n,
26 804 F.2d 64, 65 (7th Cir. 1986). Inmates have no right to be
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1 housed in a particular institution. Montayne v. Haymes, 427 U.S.
2 236 (1978).

3 Furthermore, the Supreme Court has made clear that, in
4 evaluating detention conditions, the federal courts must not
5 substitute their judgment for that of jail officials: "In
6 determining whether restrictions or conditions are reasonably
7 related to the Government's interest in maintaining security and
8 order and operating the institution in a manageable fashion,
9 courts must heed our warning that such considerations are
10 peculiarly within the province and professional expertise of
11 corrections officials, and, *in the absence of substantial evidence*
12 *in the record to indicate that the officials have exaggerated*
13 *their response to these considerations, courts ordinarily should*
14 *defer to their expert judgment in such matters."* Bell v. Wolfish,
15 441 U.S. 520, n.23 (1979) (emphasis added). See also Mauro v.
16 Arpaio, 188 F.3d 1054, 1058 (9th Cir. 1999) (en banc) ("Running a
17 prison is an inordinately difficult undertaking that requires
18 expertise, planning, and the commitment of resources, all of which
19 are peculiarly within the province of the legislative and
20 executive branches of government.").

21 As outlined in AW Baird's declaration, Mr. Rosas-Leon engaged
22 in a pattern of behavior that included an open disregard of the
23 institution's rules and regulations. His conduct was not only
24 egregious but if he were to be permitted to return he would likely
25 openly flaunt his self-perceived power within the facility. There
26 is no evidence that officials at the MCC exaggerated their
27 response to the issues that Rosas-Leon created. The Bureau of
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1 Prisons has reasonably exercised its professional expertise in
2 this situation by deciding to transfer Rosas-Leon; this Court
3 should defer to its expert judgment.

4 **B. Law Library Access Cannot Form the Basis of a Transfer Order**

5 Rosas-Leon's motion asserts that the inmate law library at
6 GEO is inadequate, even though he had never used it when the
7 motion was filed. There is no constitutional requirement that an
8 inmate have absolute access to a prison law library. In Kane v.
9 Espitia, 546 U.S. 9 (2005), the Supreme Court clarified that
10 Faretta v. California, 422 U.S. 806 (1975) did not clearly
11 establish an inmate's law library access right, and neither did
12 any other Supreme Court or appellate case. In Espitia, the
13 Supreme Court held that the Ninth Circuit case that Defendant
14 cites, Bribiesca v. Galaza, 215 F.3d 1015 (9th Cir. 2000),
15 "therefore erred in holding, based on Faretta, that a violation of
16 a law library access right is a basis for federal habeas relief."
17 546 U.S. at 13.

18 In addition, in Lewis v. Casey, 518 U.S. 343 (1996), the
19 Supreme Court found that Bounds v. Smith, 430 U.S. 817 (1977),
20 "did not create an abstract, freestanding right to a law library
21 or legal assistance"; rather, "the right that Bounds acknowledged
22 was the right of access to the courts." 430 U.S. at 350-51.
23 Lewis also clarified that "an inmate alleging a violation of
24 Bounds must show actual injury" to have standing to allege a
25 deprivation of right to access the courts. Id. at 349.

26 In order to make a "right of access to the courts claim"
27 based on inadequate access to the law library, an inmate must
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1 establish two things: (1) that access was so limited as to be
2 unreasonable; and (2) the inadequate access caused actual injury.
3 Vandelft v. Moses, 31 F.3d 794, 797 (9th Cir. 1994). Rosas-Leon
4 makes neither claim.

5 Officials may reasonably regulate the time, place, and manner
6 in which the inmate library is used. See Isaac v. Jones, 529
7 F.Supp. 175, 178-179, (N.D. Illinois 1981), citing Bounds v.
8 Smith, 430 U.S. 817, 830 (1977) and Knell v. Bensinger, 489 F.2d
9 1014, 1017 (7th Cir. 1973).

10 The Western Regional Detention Facility at San Diego ("GEO")
11 warden wrote a letter (attached as Exhibit 2) outlining Rosas-
12 Leon's arrival at the facility and access to the law library. The
13 GEO warden indicates that GEO's law library contains recent
14 editions of the Supreme Court Reporter, United States Code,
15 Federal Supplement, and West's Federal Digest on computer. The
16 warden's letter summarizes GEO's operational procedures for
17 library use and indicates that Rosas-Leon spent many hours in the
18 GEO law library on May 6 and May 7, 2008.

19 Additionally, Mr. Rosas-Leon can enlist his stand-by counsel
20 to supplement his legal research. The record in this case
21 demonstrates that Federal Defenders, Rosas-Leon's standby counsel,
22 have filed multiple motions on his behalf, including this motion
23 for miscellaneous relief. Rosas-Leon has ample resources to
24 prepare for his trial and guarantee his access to the court
25 system: (1) the GEO law library; (2) dozens of hours already spent
26 in the MCC library; and (3) the two veteran attorneys from Federal
27 Defenders who serve as his standby counsel.

III

CONCLUSION

For the foregoing reasons, the United States of America on behalf of the Metropolitan Correctional Center in San Diego and the United States Marshals Service, submits that this Motion for Miscellaneous Relief be denied.

DATED: May 12, 2008

KAREN P. HEWITT
United States Attorney

/s/ Christina M. McCall

CHRISTINA M. McCALL
Assistant U.S. Attorney